

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MICHAEL W. MERCIER

Plaintiff,

V.

AZZ, INC.,

Defendant

Civil Action No.:

NOTICE OF REMOVAL OF CIVIL ACTION
TO THE UNITED STATES DISTRICT COURT

PLEASE TAKE NOTICE that Defendant AZZ Inc. (“AZZ”) hereby removes the civil action pending in the Commonwealth of Massachusetts, Superior Court Department, styled *Michael W. Mercier v. AZZ, Incorporated*, Civil Action No. 1873CV00056C, to the United States District Court for the District of Massachusetts. Defendant will promptly file a Notice of this Removal with the Commonwealth of Massachusetts, Superior Court Department, and serve the Notice on all parties.

GROUNDS FOR REMOVAL JURISDICTION

1. Pursuant to 28 U.S.C. § 1446, AZZ invokes this District Court’s jurisdiction under 28 U.S.C. § 1441 (providing that defendants may remove any civil action, filed in state court, of which the District Courts of the United States have original jurisdiction) and 28 U.S.C. § 1332 (granting District Courts original jurisdiction of all civil actions between persons of diverse citizenship).

2. On January 17, 2018, Plaintiff Michael W. Mercier (“Mercier”) filed an Original Complaint and Jury Demand against AZZ in the Commonwealth of Massachusetts, Superior Court Department, (the “Complaint”). A copy of the Complaint, along with all other documents filed with the Commonwealth of Massachusetts, Superior Court Department, is attached hereto as **Exhibit 1**. Exhibit 1 constitutes all of the process and pleadings that have been served upon AZZ in this action. Attested to copies of all docket entries in the Massachusetts Superior Court record shall be filed within 28 days, in accordance with Local Rules 5.4(f) and 81.1(a). The Civil Cover Sheet, as required by Local Rules 3.1 and 5.4(e), and Local Category Sheet are attached hereto as **Exhibit 2**.

3. In the Complaint, Mercier alleges claims for non-payment of commission wages and overtime wages relating to his former employment with AZZ.

4. At the time of filing of this action, as stated in Paragraph 2 of the Complaint, and at the time of filing of this Notice, Mercier resides in Attleboro, Massachusetts, and is therefore a citizen of the Commonwealth of Massachusetts. As stated in Paragraph 3 of the Complaint, AZZ is not a citizen of the State of Massachusetts. AZZ is a Texas corporation with its principal place of business in Texas. AZZ is therefore a citizen of the State of Texas. 28 U.S.C. § 1332(c)(1). Removal is proper because there is complete diversity between the parties.

5. Further, by his own admission, Mercier “seeks lost commissions of \$21,151,” “several years” of overtime payments, and “statutory trebling of damages.” Complaint at ¶11, ¶6, Jury Demand. Because the parties have complete diversity of citizenship and because the amount in controversy exceeds the \$75,000 statutory minimum for diversity jurisdiction, this Court has original jurisdiction under 28 U.S.C. § 1332.

6. AZZ received the Complaint on February 12, 2018. Removal pursuant to 28 U.S.C. § 1446(b) is timely because this Notice of Removal has been filed within thirty days of the AZZ's receipt of the Complaint, "the initial pleading setting forth the claim for relief upon which such action or proceeding is based." 28 U.S.C. § 1446(b)(1).

7. Venue is proper in this district under 28 U.S.C. § 1441(a) because the state court where the suit has been pending is located in this district.

8. Defendant will give notice of the filing of this Notice of Removal to the Plaintiff and to the Commonwealth of Massachusetts, Superior Court Department, in which Civil Action No. 1873CV00056C is pending.

9. AZZ seeks removal of this action without prejudice to any and all defenses available to it, such as objections to service of process and jurisdiction.

PRAYER

WHEREFORE, Defendant AZZ Inc., respectfully prays that this matter, previously pending in the Commonwealth of Massachusetts, Superior Court Department, styled *Michael W. Mercier v. AZZ, Incorporated*, Civil Action No. 1873CV00056C, be removed to the United States District Court for the District of Massachusetts.

Respectfully Submitted,

AZZ, INC.,

By their attorneys,

/s/ Jed DeWick

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(Motion for *Pro Hac Vice* Admission to follow)

Dated: March 5, 2018

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via First Class Mail and Email on this 5th day of March, 2018, to counsel for the Plaintiff, at the following address:

Stephen Churchill
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/s/ Sarah E. A. Sousa
Sarah E. A. Sousa